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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,294	03/12/2004	William H. Velke		5190

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CANADA

EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,294	<b>Applicant(s)</b> VELKE, WILLIAM H.	
	<b>Examiner</b> Josiah Cocks	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 65-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendments/responses filed 6/27/2005, 5/20/2005, 3/28/2005 and 3/15/2005 are acknowledged.

### ***Information Disclosure Statement***

2. Applicant has been advised that the listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." In the response filed 5/20/2005 applicant indicates a desire not to include the references listed in the specification in a separate paper.

### ***Specification***

3. The amendments to the specification filed 6/27/2005 have been entered.

### ***Drawings***

4. The drawings were received on 3/28/2005. These drawings are accepted by the examiner. As previously required, the drawings now identify the insulating material of the claims

The prior Office action also objected to the drawings as not showing heat transfer zones being operated from a source other than the combustion or exhaust gas vent area of the combustion mechanism. Applicant argues the presence of heat exchanger (7) not being attached to the flue stack (10) is necessarily regarded as providing that this heat exchanger is being heated from another source (note page 11 of response filed 5/20/2005). The examiner agrees. Accordingly, this prior drawing objection is withdrawn.

The drawings as filed 3/12/2004 with replacement sheets (with Figs. 1 and 2) filed 3/28/2005 are accepted by the examiner.

***Claim Rejections - 35 USC § 112, first paragraph***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 73 and 83 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See MPEP § 2163.06.

The original disclosure does not provide support for the fuel being suspended coal dust or a coal dust slurry (now claims 73 and 83).

In regard to applicant's arguments filed 5/20/2005 relating to the recitation of suspended coal dust or a coal dust slurry, such a recitation of this particular type of fuel source was not

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included in the original application as filed. Applicant's specification broadly disclosed the use of fluid hydrocarbon fuel but did not refer to "suspended coal dust" or a "coal dust slurry." It has been held that the introduction of claim changes, which involve narrowing the claims by introducing elements or limitations which are not supported by the as-filed disclosure, is a violation of the written description requirements of 35 U.S.C. 112, first paragraph. See MPEP 2163.05(II) (citing *Fujikawa v. Wattanasin*, 93 F.3d 1559, 1571, 39 USPQ2d 1895, 1905 (Fed. Cir. 1996)). Accordingly, the recitation of "suspended coal dust" or "coal dust slurry" serves to narrow the claims in a manner that was not supported by the as-filed disclosure.

In regard to the recitation of the ranges in the claims as to the upper and lower limits of the fuel temperature, namely:

- 165 degrees Fahrenheit to the fuel's flash point of auto ignition temperature (claims 65 and 75)
  - o the narrower recitation of 165 degrees to 900 degrees Fahrenheit (claims 69 and 79)

Pursuant to applicant's arguments and supported by the holding of the court in *In re Wertheim*, the examiner considers that these narrower ranges cited in the specification and applicant's claims as originally filed (see applicant's specification page 5, and original claims 1, 4, 14, and 15) meet the description requirement of 35 USC 112, first paragraph because they are within the broad ranges originally disclosed by applicant. See MPEP 2163.05(III) (citing *In re Wertheim*, 541 F.2d 257, 191, USPQ 90 (CCPA 1976)). Accordingly, the prior rejections of the claims under this section are withdrawn.

However, there is no evidence of record to support an assertion of criticality of the narrower fuel temperature ranges. While applicant's arguments submitted 5/20/2005 may possibly be considered an indication that applicant considers the narrow temperatures ranges now claimed to be distinct from the broad recitation (such as that of U.S. Patent No. 6,736,118) there is simply no evidence of record to support such an assertion.

### *Double Patenting*

7. In the response filed 5/20/2005, applicant provided substantial arguments as to perceived errors in the double patenting rejections that have been applied during the prosecution of this application. Applicant has relied upon 35 U.S.C. 121 to assert that neither applicant's prior parent U.S. Patent No. 6,736,118 nor co-pending application 10/798,292 may be applied as there was a restriction requirement made in the parent Patent No. 6,736,118. However, reliance on this statute is limited to those claims of the divisional applications that are drawn to an invention that was asserted to be an independent and distinct invention in the restriction requirement. The prohibition does not apply where the divisional applications includes claims that are drawn to the same invention that has already been patented. See MPEP 801.04 (F) and the paragraph following (F).

Accordingly, where applicant submits claims in this application that are of a scope that is not patentably distinct from a claim already patented in Patent No. 6,736,118, such claims are not drawn to an independent or distinct invention. As applicant is aware, the restriction requirement was made on the basis of classification of the combustion mechanism, (i.e. various types of heaters, gas turbine engine, etc.) (note pages 18-19 of applicant's 5/20/2005 response in

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which applicant identified the categories of invention that were subject to restriction). Turning to applicant's claims in this application, the examiner notes that only claim 71 includes subject matter that was identified in the restriction requirement to be an independent invention. The invention specified, for instance in applicant's new claim 65, is not related to an invention that was considered independent or distinct in the restriction requirement of the parent patent.

However, the examiner notes that the claims of this application as now presented are considered distinct from the claims of the parent patent No. 6,736,118 for reasons unrelated to the restriction requirement that was made in the parent patent. The method claims as now presented in this application include a different statement of the method (as appears in the preamble) and include different temperature ranges for the heating and cooling of the feeds.

Further, a similar analysis applies to double patenting rejections made between the divisional child applications of the patented parent. Applicant should note that the prior double patenting rejection made between the two divisional applications (this application and application 10/792,292, see Office Action mailed 2/9/2005) was proper, as the claims of this application that were made a part of the rejection were identical in both language and scope to the corresponding claims of application 10/792,292. Applicant should have noted that those dependent claims that specified the type of combustion mechanism (e.g. former claims 50 and 51 of this application) were not included in the statement of the grounds of the double patenting rejection.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 65-69 and 72-84 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 49-55 and 58-70 of copending Application No. 10/798,292.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the only distinctions between these claims of this application and the relevant claims of Application No. 10/798,294 is the narrowing of the ranges for the cooling temperature of the air feed. These distinctions are not considered to be patentably distinct. Regarding these cooling ranges, there is no evidence to suggest any criticality associated with a narrower temperature ranges (i.e. the lower limit of plus 50 as claimed in 10/798,292). While the lower



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limit of plus 50 does appear to be within the broader range of ambient to minus 40 (as originally claimed in claim 1) there is no rationale for the selection of plus 50 degrees. Why and with what support is the lower limit of ambient patentably distinct from plus 50 degrees Fahrenheit?

Absent some evidence showing new or unexpected results to establish criticality for the claimed range, a person of ordinary skill in the art would reasonably consider any range selected (such as plus 50 to minus 40 degrees Fahrenheit as in 10/798,292 within the broad range (i.e. ambient to minus 40 degrees Fahrenheit as in 10/798,294) to be obvious based simply on the level of cooling desired. Accordingly, these ranges are considered obvious range selections of those described in the co-pending application 10/798,292.

In regard to the device claims, the relevant claims of the two applications are distinguished only in the recitation of the cooling temperatures that result from heating and cooling of the air feed by the heat exchanger assembly. The examiner considers that the structures of each of the device claims would be capable of achieving all of the temperature ranges recited. Accordingly, the structure claims of these two applications are also not considered to be patentably distinct from one another.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

10. Applicant should note that the applicant's reliance on 35 USC 121 as relates to the claims of the application that are drawn to an invention that was made part of the restriction requirement of the parent Patent No. 6,736,118 is correct. This requirement distinguished between specific types of combustion mechanism. Accordingly, claims 70 and 71, which limit the combustion

mechanism to a component of a gas turbine or turbine system **are not** subject to the double patenting rejections made above.

Further, as should now be clear to applicant, there is no prohibition stemming from 35 USC 121 for the double patenting rejection made above. However, it would appear that any future double patenting rejection based on the co-pending application 10/794,292 applied to this application would be overcome were applicant to substitute the term “gas turbine” for each occurrence of the term “combustion mechanism” appearing in the claims in order to limit the claims of this application to a distinct invention as was defined in the restriction requirement of the parent patent.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 65-69, 71, 72, 74-82, and 84 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,720,057 to Arenson (“Arenson”).

Arenson discloses in Figures 1-4 the invention described in applicant’s claims 65-69, 71, 72, 74-82, and 84. In particular, in Figure 3 Arenson shows an embodiment of a process and device where a first exchanger assembly (116) extends through a first heat transfer zone related to the combustion mechanism and a second heat exchanger assembly (126) extending through a second heat transfer zone of the combustion mechanism and is shown not to be operated by the

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exhaust vent area of the combustion mechanism. The fuel supplied through conduit (120) is heated at exchanger (116), which is heated by exhaust gases from a combustion mechanism that forms part of combustion turbine engine (112 or 28) conveyed through line (114). Air is conveyed through conduit (128) to the second heat exchanger (126). Example 2 (beginning in column 12) shows that liquid natural gas is heated in the same manner proposed by applicant in order to leave heat exchanger (116) at a temperature of 168 degrees F (see col. 12, line 49) and that air is cooled in the same manner proposed by applicant in order to leave heat exchanger (126) at a temperature of 40 degrees F (see col. 12, line 32). These specific examples fall within applicant's claimed temperature ranges. Further, the examiner considers that as the process described in Arenson is identical to that of applicant's invention, any change in the fuel mass to combustion air mass would also occur in the process of Arenson.

In regard to claims 74 and 82, Arenson teaches that the heated cryogenic fluid/liquid natural gas is the fuel source for operation of the turbine engine (112 or 28, e.g. see col. 1, lines 48-50 and col. 6, lines 65-68). Liquid natural gas is distinguished from natural gas (see col. 1, lines 26-29) and is considered to constitute a liquid fuel and a fuel other than natural gas or propane gas.

In regard to applicant's device claims (i.e. beginning with claim 75), the recitation of the temperatures to which the fuel is heated and the air cooled are simply statements of the intended use of the heat exchangers (i.e. to function to heat and cool the respective feeds). A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the

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claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963). In this case, even if Arenson were not considered to disclose points within the temperature ranges recited by applicant (which it does, as noted above), the examiner considers that the heat exchangers disclosed by Arenson would be capable of heating and cooling to the temperatures recited and these meet the structural limitations of the claim.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 70 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Arenson as applied to claim 65 above with reference to U.S. Patent No. 3,224,194 to De Feo et al. ("De Feo") cited as evidence of inherency.

In regard to claim 70, this claim specifies that the combustion products produced by the combustion mechanism operate a single or dual cycle turbine system. Arenson clearly shows that a combustion mechanism that is a conventional gas turbine engine (see col. 3, lines 31-35). It has been held that a rejection under 35 U.S.C. 102 based on multiple references is proper where the extra references are used for showing that a characteristic not disclosed is inherent.

See MPEP 2131. In this case, it is inherent in the disclosure of a conventional gas turbine engine of Arenson that such an engine would necessarily include a combustion area for burning fuel and air to produce combustion products, which are then used to operate a single cycle or dual cycle turbine system. Reference is made to De Feo, which clearly shows that a conventional turbine gas engine includes a combustion area (16) that produces combustion products that drive a turbine (21) of a single cycle turbine system. Accordingly, applicant's claim 70 is not considered to read over the recitation of the gas turbine engine in Arenson.

15. Claims 67, 68, 77, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arenson as applied to claims 65 and 75 above and further in view of U.S. Patent No. 5,888,060 to Velke ("Velke")

Arenson discloses all the limitations of claims 67, 68, 77, and 78 except for one of the heat transfer zones being related to the combustion area of the combustion mechanism, and possibly that at least one of the heat transfer zones is operated from a source other than the combustion or exhaust gas vent area of the combustion mechanism.

Velke teaches a device for pre-heating fluid to decrease its density and thus increase efficiency that is considered analogous prior art. In Velke, a heat storage material forms part of a heat exchanger assembly (see col. 4, lines 18-23) for the purpose of equalizing heat transfer from the heating zone to the heat exchanger during on/off cycles of the appliance. Velke also teaches the use of insulating material (21) in the heat exchanger shown in Figure 4 for the purpose of protecting against external heat loss. Velke further teaches the use of a heat transfer zone being related to the combustion area of the combustion mechanism for the purpose of increasing

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efficiency of the appliance (see the abstract). The fuel employed is natural gas, propane gas, or other conventional fluid hydrocarbon fuel (see col. 3, lines 64-65).

In regard to claims 68 and 78, it is not entirely clear from Arenson what source is used to operate the heat exchanger (e.g. 126). However, Velke clearly teaches that an heat transfer zone is operated from a source other than the combustion or exhaust gas vent area of the combustion mechanism in the cases where access to these heat source location is difficult (see col. 4, lines 16-18).

Therefore, in regard to claims 67, 68, 77, and 78, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Arenson: to incorporate the heat transfer zone being operated form a source other than the combustion or exhaust gas vent area of the combustion mechanism as taught in Velke in the case that such heat source location is difficult to reach (see Velke, col. 4, lines 16-18); and to incorporate heat transfer zone being related to the combustion area of the combustion mechanism as taught by Velke for the purpose of increasing the efficiency of the appliance (see abstract).

16. Claims 73 and 83 rejected under 35 U.S.C. 103(a) as being unpatentable over Arenson as applied to claims 65 and 75 above in view of U.S. Patent No. 2,986,456 to Toulmin ("Toulmin").

Arenson discloses all the limitations of claims 73 and 83 except that the liquid hydrocarbon fuel is a suspended coal dust or a coal dust slurry.

Toulmin teaches a liquid hydrocarbon fuel for combustion devices that is in the same field of endeavor as that of Applicant and of Arenson. In Toulmin, it is well understood that a liquid hydrocarbon fuel used, for instance in gas turbines (see col. 1, lines 24) includes powdered

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coal (i.e. coal dust) as such fuel burns easily, produces ultra high temperatures and high velocity gases, and provides the maximum extraction of B.t.u.s from the burning of the fuel (see col. 1, lines 16-20 and col. 2, lines 24-34).

Therefore, a person of ordinary skill in the art at the time the invention was made would modify the liquid hydrocarbon fuel of Arenson to incorporate the coal dust disclosed in Toulmin for the fuel's desirable qualities in burning easily, producing ultra high temperatures and high velocity gases, and providing the maximum extraction of B.t.u.s from the burning of the fuel (see Toulmin, col. 1, lines 16-20 and col. 2, lines 24-34).

### *Response to Arguments*

17. Applicant's arguments filed 6/27/2005, 5/20/2005, 3/28/2005 and 3/15/2005 as to the prior art rejections have been fully considered but they are not persuasive. In regard to allowable subject matter indicated in the prior Office action (i.e. claims 29, 32, and 42, now claims 70, 73, and 82). As noted above, after further review, the use of combustion products to operate a single cycle turbine system is shown in the recitation of a gas turbine engine of Arenson (with supporting evidence provided in the reference to Feo). Further, the recitation of a fuel other than natural gas or propane gas is also met by Arenson. Lastly, suspended coal dust is a well known fuel as shown in Toulmin. Accordingly, the indication of allowable subject matter for these claims is withdrawn. This action is made **non-final**.

### **Regarding Prior Art**

Applicant argues that the Arenson reference and that of Velke do not claim the invention as recited in applicant's claims. However, an assertion that references do not **claim** the same

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invention as applicant is irrelevant. The relevant consideration is what these references **disclose or describe** to a person of ordinary skill in the art. What these references disclose or describe is that appearing in the patent as a whole and not merely what these references are claiming (note the statutory language identified above for 35 USC 102 and 103). As noted above, the examiner has identified both method steps and structure present in the prior art, upon which applicant's claims read.

Applicant also argues that applicant's invention is distinct from Arenson because applicant's independent claims "make specific reference to a hydrocarbon being a fluid" (see response of 4/11/05, page 40). However, as made clear in Arenson, (for example, see example 2, column 12) Arenson includes the use of a liquefied natural gas (i.e. a fluid fuel) that is heated by a heat exchanger (116) in the same manner proposed by applicant to an example temperature of 168 degrees Fahrenheit (see col. 12, line 49). Combustion air is also passed through a second heat exchanger (126) and undergoes cooling, in the same manner proposed by applicant, to an example temperature of 40 degrees Fahrenheit (see col. 12, line 32). Arenson is clearly concerned with a fluid hydrocarbon fuel and combustion air that is acted on in the same manner proposed by applicant.

Applicant's claims are not considered to read over the prior art.

**Regarding application's submission of the account of correspondence from CGRI Research Institute.**

Applicant submits the account of correspondence from CGRI Research Institute (beginning on page 23 of the response filed 3/15/2005) purportedly as evidence of the level of ordinary skill in art. However, this report is submitted merely in the form of arguments made by



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applicant and not in the form of a declaration or affidavit under 37 CFR 1.132. Objective evidence must be supported by an appropriate declaration or affidavit to be of probative value.

See MPEP 716.01(I), (II), and (III).

Accordingly, this account of the correspondence from CGRI is not considered persuasive in overcoming the rejections based on the prior art.

### *Conclusion*

18. As this Office action introduces rejections of the claims that were not previously presented to applicant, this action is made **non-final**. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

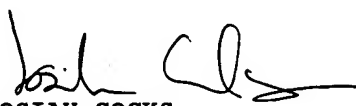
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
October 26, 2005



JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749